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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/816,362

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Adam Merzon

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12/15/2006

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EXAMINER

HENDERSON, MARK T

ART UNIT

PAPER NUMBER

3722

DATE MAILED: 12/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

NT

Office Action Summary	Application No.	Applicant(s)	
	10/816,362	MERZON, ADAM	
	Examiner	Art Unit	
	Mark T. Henderson	3722	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 October 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-24 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED OFFICE ACTION

Faxing of Responses to Office Actions

In order to reduce pendency and avoid potential delays, TC 3700 is encouraging FAXing or responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers, which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into TC 3700 will be promptly forwarded to the examiner.

1. Claims 1-24 have been amended for further examination.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 22 and 23 are finally rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which

was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 22 and 23 disclose the limitation of a stretchable gather with “a strain relief characteristics greater than the strain relief characteristics of adjacent parts thereof, to dampen the pulling stress of the said zipper in an open position” which is not disclosed in either the drawings or specification. Therefore, patentable weight will not be given to this limitation.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 6-9 are finally rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. In Claim 6, lines 2 and 3, it is still unclear how the hold down page is anchored to the spine, when the ring binders connected to the hold down page do not contact the spine (see Fig. 4).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3, and 20 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Lehnert (DE-4339929C1).

Lehnert discloses in Fig. 1-4, a binder arrangement comprising: a pair of covers (1 and 2) carried by a spine (3); a first binder (4 on left side') carried by one of the covers (1); and a second binder (4R) carried by the other cover (2); wherein the pair of covers are hingedly carried by the spine (3), and constructed with a pivoting surface that pivots 90 degrees against the spine; wherein one of the binder is offset from the other one of the binders such that the binder do not overlies each other when in a closed position (see Fig. 2); and wherein one of the binder can be spaced away from a centerline of the spine (also see Fig. 2).

5. Claims 22-24 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Wien et al (6,488,433).

Wien et al discloses in Fig. 1 and 2, a binder arrangement comprising: cover (14 and 16) connected to a spine (12) by a hinge (A and B)); a binder (40 and 42) attached to one of the covers (16); a case that includes a sidewall (44 and 46) that extends between side edges (18) of the covers that is releasably closed by a zipper (B); and a stretchable gather or connector that attaches one end of the zipper to the spine (G).

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1 and 6-9 are finally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 46-49 of copending Application No. 10/858,280. Although the conflicting claims are not identical, they are not patentably distinct from each other because both disclose a binder arrangement comprising a pair of covers carried by a spine; a first binder carried by one of the covers; a second binder carried by the other cover; at least one of the binders having a hold down page; wherein the hold down page has a latch strap and the cover has a latch receiver; wherein the latch strap and receiver is a hook and loop fastener.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

7. Claims 1 and 10-12 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 46 of copending Application No. 10/858,280 in view of Wien et al (6,488,433). Both applications comprise: a binder arrangement comprising a pair of covers carried by a spine; a first binder carried by one of the covers; a second binder carried by the other cover.

However, the application ('280) does not disclose a case that includes flexible sidewalls that comprise a skirt that extends along the side edges of each cover; wherein the skirts are releasably attached to one another by a zipper that is elastically anchored to the spine by a gather or connector.

Wien et al discloses in Fig. 1 and 2, a binder arrangement comprising: cover (14 and 16) connected to a spine (12) by a hinge (A and B)); a binder (40 and 42) attached to cover (16); a case that includes a sidewall (44 and 46) that extends between side edges (18) of the covers that is releasably closed by a zipper (B); and a stretchable gather or connector that attaches one end of the zipper to the spine (G).

This is a provisional obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 4 and 5 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Lehnert.

Lehnert discloses a binder arrangement comprising all the elements as disclosed in Claim 1, and as set forth above. However, Lehnert does not disclose: wherein the offset is between one quarter of an inch and three-quarters of an inch; wherein the offset is about one-half an inch.

In regards to **Claims 4 and 5**, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the offset at any desirable range, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. Therefore, it would have been obvious to construct the binder offset at any desirable range, since applicant has not disclosed the criticality of the having the offset with a particular distance range, and invention would function equally as well with any desirable offset distance.

9. Claims 6-9 and 21 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Lehnert al in view of Zimbelman (D364,640).

Lehnert discloses a binder arrangement comprising all the elements as disclosed in Claim 1, and as set forth above. However, Lehnert does not disclose: wherein one of the binders includes a hold down page that is equipped with a releasable latch that releasably anchors the page to one of the covers; wherein the latch comprises a latch strap carried by the one of the covers and a latch receiver carried by the hold down page; wherein the latch strap and receiver comprises a hook loop and fastener.

Zimbelman discloses in Fig. 1 and 2, a binder arrangement comprising: a hold down page (A) that is equipped with a releasable latch receiver (D) that releasably anchors one of the covers (B) to the hold down page through a latch strip (C).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Lehnert's binder arrangement with a hold down page as taught by Zimbleman for providing storage separators.

10. Claims 1 and 10-12 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Lehnert in view of Wien et al.

Lehnert discloses a binder arrangement comprising all the elements as disclosed in Claim 1, and as set forth above.

However, Lenert does not disclose: flexible sidewalls that include a skirt that extends along the side edges of each cover; one skirt releasably attached to the other skirt by a fastening arrangement that is elastically anchored to the spine by a gather.

Wien et discloses a binder arrangement comprising: Wien et al discloses in Fig. 1 and 2, a binder arrangement comprising: cover (14 and 16) connected to a spine (12) by a hinge (A and B)); a binder (40 and 42) attached to one of the covers (16); a case that includes a sidewall (44 and 46) that extends between side edges (18) of the covers that is releasably closed by a zipper (B); and a stretchable gather or connector that attaches one end of the zipper to the spine (G).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Lehnert's binder arrangement with a cover having flexible sidewalls, and skirts and a stretchable gather as taught by Wien for providing a binder which will be completely closed from outside elements.

11. Claims 13-19 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Lehnert in view of Welch (6,209,917).

Lehnert discloses a binder arrangement comprising all the elements as disclosed in Claim 1, and as set forth above.

However, Lenert does not disclose: wherein each hinge comprises a plurality of scores slits formed in the interior surface of the board; wherein the board is comprised of a fibrous material, or kraftboard; wherein the scores define a region that is compressed to a thickness less than the surrounding thickness of the board; and wherein the spine can include any desirable number of scored hinges.

Welch discloses a binder arrangement comprising: wherein the spine and covers are defined by a board that includes spaced apart integrally formed hinges (45), wherein each hinge

comprises a plurality of scores slits formed in the interior surface of the board (Col. 6, lines 1-30, and seen in Fig. 6); wherein the board is comprised of a fibrous material, or kraftboard (abstract); wherein the scores define a region that is compressed to a thickness less than the surrounding thickness of the board (see Fig. 6); and wherein the spine can include any desirable number of scored hinges (Col. 6, lines 15-20).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Lehnert's binder arrangement with a cover having flexible sidewalls, and skirts and a stretchable gather as taught by Welch for providing a binder which will be completely closed from outside elements.

Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Norman, Lehnert ('287), and Vogel disclose similar binder arrangements.

Response to Arguments

Applicant's arguments with respect to claims 1-24 have been considered but are moot in view of the new ground(s) of rejection. The Lehnert reference is now used to disclose a binder having dual binding means, which can be parallel to the spine, and wherein the covers can be pivotably closed.

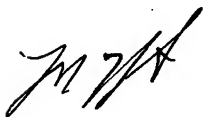
Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark T. Henderson whose telephone number is (571) 272-4477, and informal fax number is (571) 273-4477. The examiner can be reached on Monday-Friday from 9:00AM to 3:45PM. If attempts to reach the examiner by telephone are unsuccessful, the Examiner Supervisor, Monica Carter, can be reached at (571) 272-4475. The formal fax number for TC 3700 is (571) 273-8300.



MTH

December 8, 2006



MONICA CARTER
SUPERVISORY PATENT EXAMINER